

SUMMARY ANALYSIS OF AMENDED BILL

Author: Nakanishi, et al. Analyst: Victoria Favorito Bill Number: AB 154
 Related Bills: See Prior Analysis Telephone: 845-3825 Amended Date: May 8, 2007
 Attorney: Daniel Biedler Sponsor: _____

SUBJECT: Energy Efficient Commercial Building Costs Deduction Conformity

☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced January 18, 2007.

☒ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced January 18, 2007.

☒ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO _____.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED January 18, 2007, STILL APPLIES.

☒ OTHER – See comments below.

SUMMARY

This bill would conform California income tax law to the federal law permitting a deduction for the cost of energy efficient commercial buildings, but would limit the deduction to buildings located in California.

SUMMARY OF AMENDMENTS

The May 8, 2007, amendments added operative and repeal dates, and added a requirement that the building be located in California. This requirement raised a legal concern as discussed below. In addition, the amendments resolved the "Technical Considerations" identified in the department's analysis of the bill as introduced January 18, 2007.

The "Effective/Operative Date" description has been revised to reflect the May 8, 2007, amendments. Additionally, a new "Revenue Estimate" is provided to reflect the new operative date. The remainder of the analysis of the bill as introduced January 18, 2007, still applies. The "Implementation Consideration" identified in the department's analysis of the bill as introduced January 18, 2007, was not resolved by the May 8, 2007, amendments and is restated for convenience.

Board Position:

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Legislative Director

Date

Patrice Gau-Johnson
for Brian Putler

5/16/07

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and apply only to commercial buildings located in California that receive certification on or after January 1, 2008. The bill's provisions would be repealed on December 31, 2010, unless a later enacted statute, which is enacted before that date, deletes or extends the repeal date.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

The current bill language has not incorporated the Energy Policy Act of 2005 (PL 109-58) changes to related IRC provisions regarding energy efficient commercial building properties, namely rules specifying: 1) the recapture of gain when property is sold or exchanged, 2) treating the amounts paid for energy-efficient commercial property as an exception to the general capital expenditure rule, and 3) the computation of earnings and profits. It is recommended that this bill conform to these federal changes. The absence of these defined rules could lead to disputes between the taxpayer and the department that would complicate administration of this deduction.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, the negligible revenue impact from this bill would be as follows:

Estimated Revenue Impact of AB 154 Operative On Or After January 1, 2008 Enactment Assumed After June 30, 2007			
Energy Efficient	2007-08	2008-09	2009-10
Deduction	-\$250,000	-\$250,000	-\$250,000

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact is reduced from the bill as introduced. Revenue estimates were based on pro-rated Federal projections developed for this provision in Title XIII, Energy Policy Act of 2005.

In the bill as introduced, the estimate was based on buildings placed in service in the taxable year, beginning January 1, 2007. This amendment changes the operative date of the deduction to apply to buildings with certification received on or after January 1, 2008. As a result, the revenue estimate calculation begins with a pro-ration of a later Federal fiscal year. In addition, the Federal revenue impact changes from a loss to a gain in the 2008-09 Federal fiscal year. Both changes served to change the California revenue impact from the bill as introduced.

LEGAL IMPACT

This bill would limit the deduction to buildings located in California. This requirement may be subject to constitutional challenge under the Commerce Clause of the United States Constitution.

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